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26 **UNITED STATES DISTRICT COURT**

27 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

28 AARON SENNE, et al., Individually and on
Behalf of All Those Similarly Situated,

29 Plaintiffs,

30 vs.

31 OFFICE OF THE COMMISSIONER OF
32 BASEBALL, an unincorporated association
33 doing business as MAJOR LEAGUE
34 BASEBALL; et al.;

35 Defendants.

36 CASE NO. 3:14-cv-00608-RS-EDL

37 **CLASS ACTION**

38 **DECLARATION OF AARON M. ZIGLER
39 IN SUPPORT OF PLAINTIFFS' MOTION
40 FOR ORDER TO CHANGE TIME**

1 Aaron M. Zigler declares:

2 1. I am one of the attorneys principally responsible for the handling of this matter. I am
3 personally familiar with the facts set forth in this declaration. If called as a witness I could and would
4 competently testify to the matters stated herein.

5 2. As part of my duties in this matter, I was responsible for supervising the filing of
6 Plaintiffs' class certification motion and the accompanying filings. Technical failures prevented the
7 timely filing of the Declaration of Garrett Broshuis and its exhibits prior to the midnight deadline.

8 3. On March 4, 2016, the due date for Plaintiffs' class certification motion, Korein Tillery
9 experienced firm-wide network access outages. The outages resulted from failures of the Internet
10 Service Provider's primary and secondary router on the roof of the U.S. Bank tower that houses our
11 main office and provides connectivity to our entire firm. These failures caused complete internet
12 outages and disruptions to email servers (both internal and external) to the entire firm. The failure
13 caused disruptions that persisted for approximately seven hours.

14 4. Despite these issues, Counsel was able to file Plaintiffs' motion and memorandum of
15 points and authorities for class certification, two expert declarations and additional plaintiff
16 declarations prior to the Court's deadline. However, the declaration of Garrett Broshuis which
17 enclosed several hundred deposition excerpts and documents produced by the defendants as exhibits,
18 was not timely filed. Although the declaration was complete and the filing process initiated prior to
19 the Court's deadline, we were unable to complete the filing process of this documentary evidence
20 prior to the Court's deadline. The filer's browser reported that Court's ECF system was not
21 responding and eventually that "[a]n internal error has occurred." A true and accurate copy of that
22 error message is attached to this declaration as Exhibit A. The Court's deadline had passed before
23 Counsel was able to attempt the filing a second time.

24 5. I alerted Defendants to these problems on Saturday by both email and voicemail. I
25 then emailed a letter to them on Sunday explaining in greater detail what occurred and asking whether
26 they would stipulate to or otherwise not oppose a request for a retroactive extension of time. A true
27 and accurate copy of this correspondence is attached as Exhibit B. Defendants stated that they do not
28 oppose our request to extend the time. Exhibit C. Defendants also requested an extra business day to

1 respond to Plaintiffs' class certification motion. *Id.* Plaintiffs agreed to Defendants' request, and the
2 parties will soon file a stipulation to that effect.

3 6. Defendants will suffer no prejudice from the extension. All of the exhibits attached to
4 the declaration were already in Defendants' possession and many are Defendants' own documents. To
5 ensure that Defendants suffer absolutely no prejudice whatsoever, Plaintiffs have also agreed to
6 provide an extra business day (three additional calendar days, from Friday to Monday) for Defendants
7 to respond.

8 7. Pursuant to a stipulation, the Court previously ordered the following time
9 modifications in this case:

10 a. April 10, 2014 (Dkt. 33): Pursuant to stipulation, allowed Defendants more
11 time to respond to the complaint and also moved the Initial Case Management Conference to a later
12 date;

13 b. May 12, 2014 (Dkt. 53): Pursuant to stipulation, allowed Defendants more
14 time to respond to the complaint, and allowed Plaintiffs until July 11, 2014 to oppose any pre-answer
15 motions.

16 c. May 21, 2014 (Dkt. 63): Pursuant to a stipulation, allowed a modified response
17 date for the Baltimore Orioles, Inc. and Baltimore Orioles, L.P.;

18 d. July 11, 2014 (Dkt. 186): Pursuant to stipulation, the Court granted a new
19 briefing schedule for Defendants' jurisdictional and venue motions.

20 e. September 4, 2014 (Dkt. 213): Pursuant to stipulation, continued hearing on
21 Plaintiffs' motion to Appoint Interim Co-Lead Counsel;

22 f. September 5, 2014 (Dkt. 214): Pursuant to stipulation, continued hearing on
23 Plaintiffs' motion to compel;

24 g. November 10, 2014 (Dkt. 254): Pursuant to stipulation, altered the deadline
25 for Defendants to respond to the Consolidated Amended Complaint and pre-answer motions;

26 h. December 17, 2014 (Dkt. 306): Pursuant to stipulation, altered briefing
27 schedule on Plaintiffs' motion to strike;

i. March 4, 2015 (Dkt. 359): Pursuant to stipulation, the Court granted a continuation of a case management conference;

3 j. October 5, 2015 (Dkt. 435): Pursuant to a joint request in a joint case
4 management state, the Court extended the deadline for fact discovery and the deadline for
5 Defendants to move to decertify the FLSA collective and Plaintiffs to move for class certification

6 8. The requested time modifications will not disrupt the overall schedule for this case at
7 all, and it will not disrupt the hearing date for Plaintiffs' motion for class certification.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed on March 7, 2016, at St. Louis, Missouri.

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From: [Zigler, Aaron](#)
To: [Elise M Bloom](#); [Adam M Lupion](#)
Cc: [Simon, Bruce](#); [Pouya, Bobby](#); [Broshuis, Garrett](#); [Warshaw, Daniel](#); [Tillery, Stephen](#); [Zigler, Aaron](#); [King, Robert](#)
Subject: Senne filing
Date: Saturday, March 05, 2016 12:52:34 PM

Dear Elise and Adam:

As you have probably seen by now, we have one declaration with numerous exhibits that we did not get on file before the midnight filing deadline last night. We experienced both internal technical problems and external technical glitches that led to this. We are in the process of resubmitting this filing in smaller installments, but we continue to have external technical problems that are delaying the submissions. We will be filing a motion requesting the Court to grant us leave to file this submission 24-hours past last night's deadline, and we would like to reach a stipulation if possible (or at least be able to represent that defendants have no objection). We would of course be willing to provide Defendants with an extra day on the opposition. Please let us know if you are available to discuss this issue this afternoon.

Aaron Zigler
Korein Tillery, LLC

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March 6, 2016

Via Email

Elise M. Bloom
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036

Re: *Senne v. Office of the Commissioner of Baseball*
Cause No. 3:14-cv-00608-JCS

Elise:

I am writing to follow up on my email and phone calls yesterday regarding the filing of Plaintiffs' class certification motion. We filed the motion, memorandum and all but one supporting declaration, but we encountered problems with the more than 350 accompanying exhibits, all of which were either deposition transcript excerpts or Defendants' own production documents and almost all of which needed to be filed under seal.

For approximately seven hours on March 4, Korein Tillery experienced network access outages. The outages were not caused by Korein Tillery's internal system but were instead the result of a catastrophic ISP hardware failure. The ISP's primary router located on the roof of our office building (and which provides network access to all of the ISP's customers in our office building) failed, and that failure not only took out the primary router but also the backup router. In addition to causing an outage of our Internet access, the network failure also disrupted our email (internal as well as external). We can provide a declaration from the ISP, if necessary.

After full network access was finally restored, we were able to file Plaintiffs' motion and memorandum and most other items before the filing deadline of midnight Pacific Time.

Elise M. Bloom
March 6, 2016
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Before the deadline, we had begun uploading the one remaining declaration and the hundreds of exhibits accompanying it. Once they were all uploaded, we encountered a fatal submission failure with the Court's ECF system. We received messages saying that the Court's website was not responding, and we eventually received a complete failure message from the website.

Saturday morning, we reattempted the filing of that declaration in small increments, but we still encountered problems which is the reason the filing process took most of the day.

As I alerted both you and Adam yesterday by email and voice-mail messages, we intend to seek leave from the Court to retroactively extend the deadline for this submission to March 5. We would like to reach a stipulation with Defendants if possible to avoid a motion, or to at least secure Defendants' non-opposition. We are of course willing to agree to additional time for you and your clients to respond to the motion.

Given the short length of the delay, the reason for the delay, and the absence of any prejudice to Defendants, we hope the parties can resolve this issue with a stipulation. *See Linder v. Golden Gate Bridge*, No. 14-CV-03861 SC, 2015 WL 1778608, at *2-4 (N.D. Cal. Apr. 17, 2015); *see also* N.D. Cal. L.R. 5-1(e)(5) (allowing for an extra day for filing due to ECF problems).

Ordinarily we would not require a response on such short notice, but since we need to seek relief from the Court immediately, we request that you let us know your position by noon Eastern on Monday.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron M. Zigler".

Aaron M. Zigler



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VIA ELECTRONIC MAIL

March 7, 2016

Korein Tillery
One U.S. Bank Plaza
505 North 7th Street, Suite 3600
St. Louis, MO 63101-1625

Attn.: Aaron M. Zigler

Re: *Serme, et al., v Office of the Commissioner of Baseball, et al.*
Case No.: 3:14-CV-00608-JCS (consolidated with 3:14-cv-03289)

Dear Aaron,

We are writing in response to your March 6, 2016 letter requesting our consent to a retroactive extension of the deadline for Plaintiffs to file their Motion for Class Certification and supporting papers. You asked for our response by noon today, and based upon our preliminary review of your submissions thus far, our position is as follows:

As has been evident throughout the course of this litigation, we always prefer to work cooperatively with opposing counsel and grant courtesies such as extensions where appropriate. We were troubled that you did not let us know of the so-called technical difficulties you experienced on Friday when your motion papers for class certification, as well as our Motion to Decertify the Collective, were due – but instead waited to raise this issue for the first time on Saturday afternoon, while you were still filing your motion papers, as well as other documents that should have been filed on Friday. If you had been forthcoming with us on Friday, we could have discussed the best way to proceed. But for whatever reason you decided to wait until well after the fact.

In any event, we will not oppose your request for a retroactive one-day extension of the time to file your motion papers, and you may represent our non-opposition to the Court. We appreciate your offer to give Defendants an extension of time on our opposition papers based on the events

EXHIBIT C

Proskauer»

Aaron M. Zigler
Korein Tillery
March 7, 2016
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described in your letter. We believe one business day would be a sufficient extension for Plaintiffs' untimely filings, extending Defendants' time to oppose Plaintiffs' motion for class certification to April 4, 2016, provided that the balance of the briefing schedule remains the same. Please send us a proposed stipulation to that affect. We reserve all other rights pending a more comprehensive review of Plaintiffs' motion papers.

Sincerely yours,



Adam M. Lupion